IN THE SUPREME COURT OF THE STATE OF WASHINGTON

BELLEVUE JOHN DOES 1-11, FEDERAL WAY JOHN DOES 1-5 and JANE DOES 1-2, and SEATTLE JOHN DOES 1-13, and JOHN DOE,	)	
Petitioners,	)	No. 78603-8
v.	)	
BELLEVUE SCHOOL DISTRICT #405, a municipal corporation and a subdivision of the state of Washington, FEDERAL WAY SCHOOL DISTRICT #210, a municipal corporation and a subdivision of the state of Washington, and SEATTLE SCHOOL DISTRICT #1, a municipal corporation and a subdivision of the state of Washington,	)	EN BANC
Respondents,	)	FILED July 31, 2008
and	)	
SEATTLE TIMES COMPANY,	)	
Respondent/Intervenor.	)	

FAIRHURST, J. — Fifteen public school teachers seek to enjoin their

respective school districts from releasing their names in response to a public records request by the Seattle Times Company (Times) for the names of teachers alleged to have committed sexual misconduct against students. Division One of the Court of Appeals ordered that the teachers' identities be disclosed unless the allegations of misconduct were patently false. We reverse in part.

Sexual abuse of children by school teachers is a terrible atrocity. Allegations of such abuse should be thoroughly investigated by school districts and, if the allegations are substantiated, the media may request records containing the identity of the perpetrating teacher. However, when such allegations are determined to be unsubstantiated, the identity of the teacher is exempt from disclosure to a public records request because such disclosure would violate the teacher's right to privacy. Thus, we hold the identities of public school teachers who are subjects of unsubstantiated[1] allegations of sexual misconduct are exempt from disclosure under Washington's public disclosure act (PDA), former chapter 42.17 RCW, *amended and recodified as* chapter 42.56 RCW (Laws of 2005, ch. 274).[2]

---

[1]"[U]nsubstantiated" means "not supported or borne out by fact." Webster's Third New International Dictionary 2512 (2002).

[2]The legislature amended and recodified the PDA as the Public Records Act (PRA) in 2005, moving it from chapter 42.17 RCW to chapter 42.56 RCW, effective July 1, 2006. Laws of 2005, ch. 274. The Times' public disclosure request preceded the PRA, so this opinion refers to the PDA.

We also hold that letters of direction[3] must be released to the public, but where a letter simply seeks to guide a teacher's future conduct, does not identify an incident of substantiated misconduct, and the teacher is not subject to any form of restriction or discipline, the name of the teacher and other identifying information must be redacted.

In short, when there is an allegation of sexual misconduct against a public school teacher, the identity of the accused teacher may be disclosed to the public only if the misconduct is substantiated or the teacher's conduct results in some form of discipline.

I. FACTS

In 2002, the Times filed public disclosure requests with the Seattle, Bellevue, and Federal Way school districts seeking copies of all records relating to allegations of teacher sexual misconduct in the last 10 years. The school districts notified 55 current and former teachers that their records were gathered in response to the Times' requests. Thirty-seven of the teachers filed a lawsuit to enjoin the school

[3]A "'letter of direction'" is "a letter, memorandum or oral direction which does not impose punishment, but seeks to guide or direct the employee's future performance." Clerk's Papers (CP) at 112, ¶ 11. By contrast, a "'letter of reprimand'" constitutes "a letter or memorandum finding that the employee has engaged in significant misconduct and either formally reprimanding the employee or imposing restrictions on the employee's future assignments or duties." CP at 112-13, ¶ 11.

districts from releasing their records, arguing that disclosure of records identifying them as subjects of sexual misconduct allegations violated their right to privacy.[4] The Times intervened.

The trial court ordered the school districts to disclose the identities of teachers whose alleged misconduct was substantiated, resulted in some form of discipline, or if the school district's investigation was inadequate.[5] After considering documentary evidence as to each plaintiff, the trial court concluded that the identities of 15 of the original plaintiffs were exempt from disclosure,[6] while the identities of the 22 remaining teachers were disclosable. The trial court also held the "'letters of direction'" were exempt from disclosure because disclosure would "interfer[e] with the employer's ability to give candid advice and direction to its employees." Clerk's Papers (CP) at 100, ¶ 10. Three of the teachers whose names were ordered to be disclosed appealed (Bellevue John Doe 11, Seattle John Doe 6, and Seattle John Doe 9). The Times cross appealed, seeking the identifying information of the 15 prevailing John Does.

---

[4]The school districts released to the Times unredacted records of the teachers who are not currently parties to the present lawsuit.

[5]After reviewing the documentary record, the trial court made findings as to the adequacy of each of the school districts' investigations.

[6]The Court of Appeals refers to these 15 individuals as the "prevailing John Does." *Bellevue John Does 1-11 v. Bellevue Sch. Dist. No. 405*, 129 Wn. App. 832, 857, 120 P.3d 616 (2005).

The Court of Appeals affirmed in part and reversed in part, holding, "[w]hen an allegation against a teacher is plainly false,[7] as shown by an adequate investigation, that teacher's name is not a matter of legitimate public concern." *Bellevue John Does 1-11 v. Bellevue Sch. Dist. No. 405*, 129 Wn. App. 832, 857, 120 P.3d 616 (2005). However, the Court of Appeals determined that if an allegation is unsubstantiated or determined not to warrant discipline, the identity of the accused must be disclosed. *Id.* at 838. The Court of Appeals also held letters of direction must be disclosed. *Id.* at 848-49. Accordingly, the Court of Appeals affirmed nondisclosure as to Seattle John Doe 1, Seattle John Doe 7, and Federal Way John Doe 1 (finding these allegations to be patently false), *id.* at 854-55, but reversed the order of nondisclosure with respect to the other prevailing John Does. *Id.* at 855.

Twelve of the public school teachers (teacher petitioners) whose names were ordered disclosed by the Court of Appeals collectively sought review of that decision.[8] Seattle John Doe 9 individually sought review. Bellevue John Doe 11 and Seattle John Doe 6 separately filed a joint petition for review. We denied

[7]The Court of Appeals' opinion uses "patently" or "plainly" false interchangeably. We use "patently" unless quoting.

[8]The 12 teacher petitioners include Bellevue John Does 1, 2, 3, 4, 6, 7, and 9; Federal Way John Does 2 and 3; and Seattle John Does 3, 5, and 10.

review of the individual issues raised by Seattle John Doe 9, Bellevue John Doe 11, and Seattle John Doe 6, and granted review only as to the three issues listed below. *Bellevue John Does 1-11 v. Bellevue Sch. Dist. No. 405*, 158 Wn.2d 1024 (2006).

II. ISSUES

1. Under the PDA, are the identities of public school teachers who are the subjects of unsubstantiated allegations of sexual misconduct exempt from disclosure?[9]

2. Under the PDA, are letters of direction exempt from disclosure?

3. Is former RCW 42.17.255 (1987), *recodified as* RCW 42.56.050 (Laws of 2005, ch. 274, § 103), unconstitutional because it defines privacy more restrictively than the constitutional right to privacy?[10]

III. ANALYSIS

A. Standard of review

We review decisions under the PDA de novo. Former RCW 42.17.340(3)

[9]While we framed the first issue in our January 3, 2007 order accepting review as "whether allegations of sexual misconduct that remain unsubstantiated are exempt from disclosure under the [p]ublic [d]isclosure [a]ct," the question before us is simply whether the teachers' *names and other identifying information* may be released to the public. Wash. Supreme Court Order No. 78603-8 (Jan. 3, 2007). The school districts have already disclosed numerous records documenting the nature of the allegations, types of investigations conducted, and any resulting disciplinary actions. The names of the teachers involved were changed to "John Doe" pseudonyms and other identifying information was redacted. We must now decide whether the *identities* of teachers who are the subjects of unsubstantiated allegations of sexual misconduct should be released under the PDA.

[10]We do not reach teacher petitioners' constitutional challenge as reviewing courts "should not pass on constitutional issues unless absolutely necessary to the determination of the case." *State v. Hall*, 95 Wn.2d 536, 539, 627 P.2d 101 (1981).

(1992), *recodified as* RCW 42.56.550(3) (Laws of 2005, ch. 483, § 5); *Progressive Animal Welfare Soc'y v. Univ. of Wash.*, 125 Wn.2d 243, 252, 884 P.2d 592 (1994). Issues of statutory construction are also reviewed de novo. *City of Redmond v. Moore*, 151 Wn.2d 664, 668, 91 P.3d 875 (2004).

B. Nature and purpose of the PDA

The PDA was enacted by initiative in 1972. Laws of 1973, ch. 1. The PDA requires state and local agencies to disclose all public records[11] upon request, unless the record falls within a specific PDA exemption or other statutory exemption. Former RCW 42.17.260(1) (1997), *recodified as* RCW 42.56.070(1) (Laws of 2005, ch. 274, § 284). If a portion of a public record is exempt, that portion should be redacted and the remainder disclosed. *Id.* An agency withholding public records bears the burden of proving "that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records." Former RCW 42.17.340(1).

The policy behind the PDA is to ensure "full access to information

[11]A "'[p]ublic record'" is "any writing containing information relating to the conduct of government . . . prepared, owned, used, or retained by any state or local agency." Former RCW 42.17.020(36) (2002), *amended as* RCW 42.17.020(41) (Laws of 2005, ch. 445, § 6). Bellevue John Doe 11 and Seattle John Doe 6 argue that unsubstantiated or patently false allegations of misconduct do not meet the definition of "public records" because, potentially, no government conduct exists. The absence of misconduct, however, is not necessarily the absence of conduct.

concerning the conduct of government on every level," while remaining "[m]indful of the right of individuals to privacy." RCW 42.17.010(11). We have consistently construed the PDA as "a strongly worded mandate for broad disclosure of public records." *Hearst Corp. v. Hoppe*, 90 Wn.2d 123, 127, 580 P.2d 246 (1978). Thus, the PDA's disclosure provisions are liberally construed and its exemptions are narrowly construed. Former RCW 42.17.251 (1992), *amended and recodified as* RCW 42.56.030 (Laws of 2005, ch. 274, §§ 103, 283); *see also Koenig v. City of Des Moines*, 158 Wn.2d 173, 180, 142 P.3d 162 (2006).

C. Where a public school teacher is the subject of an unsubstantiated allegation of sexual misconduct, disclosure of his or her identity violates the teacher's right to privacy under former RCW 42.17.255

The PDA exempts from disclosure "[p]ersonal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that disclosure would violate their right to privacy." Former RCW 42.17.310(1)(b) (2002), *amended and recodified as* RCW 42.56.230(2) (Laws of 2005, ch. 274, § 403). To determine whether the identities of teachers who are the subjects of unsubstantiated allegations of sexual misconduct fall within this exemption, we must decide (1) whether the allegations constitute personal information, (2) whether the teachers have a right to privacy in their identities, and (3) whether disclosure of the

teachers' identities would violate their right to privacy.

1. Allegations of sexual misconduct against a teacher constitute personal information under former RCW 42.17.310(1)(b)

"[I]n determining the meaning of a statute enacted through the initiative process, the court's purpose is to ascertain the collective intent of the voters who, acting in their legislative capacity, enacted the measure." *Amalgamated Transit Union Local 587 v. State*, 142 Wn.2d 183, 205, 11 P.3d 762, 27 P.3d 608 (2001). "Where the language of an initiative enactment is 'plain, unambiguous, and well understood according to its natural and ordinary sense and meaning, the enactment is not subject to judicial interpretation.'" *Id.* (quoting *State v. Thorne*, 129 Wn.2d 736, 762-63, 921 P.2d 514 (1996)). "'In construing the meaning of an initiative, the language of the enactment is to be read as the average informed lay voter would read it.'" *State v. Brown*, 139 Wn.2d 20, 28, 983 P.2d 608 (1999) (quoting *W. Petroleum Imps., Inc. v. Friedt*, 127 Wn.2d 420, 424, 899 P.2d 792 (1995)).

The PDA does not define "personal information." "[P]ersonal" is ordinarily defined as "of or relating to a particular person **:** affecting one individual or each of many individuals **:** peculiar or proper to private concerns **:** not public or general." Webster's Third New International Dictionary 1686 (2002). Thus, information relating to or affecting a particular individual, information associated with private concerns, or information that is not public or general constitutes personal

information under former RCW 42.17.310(1)(b).[12]

At issue in this case are two types of information: (1) the identities of the teachers who are the subjects of the allegations and (2) letters of direction. The teachers' identities are clearly "personal information" because they relate to particular people. As for the letters of direction, we previously held that employee evaluations constitute personal information within the meaning of former RCW 42.17.310(1)(b). *Dawson v. Daly*, 120 Wn.2d 782, 797, 845 P.2d 995 (1993), *abrogated in part by Soter v. Cowles Publ'g Co.*, 162 Wn.2d 716, 174 P.3d 60 (2007). We noted, "[e]mployee evaluations qualify as personal information that bears on the competence of the subject employees." *Id.*

Likewise, the letters of direction contain information regarding the school districts' criticisms and observations of the Doe employees that relate to their competence as education professionals. We hold letters of direction constitute "'[p]ersonal information'" within the meaning of former RCW 42.17.310(1)(b).

[12]This definition is similar to the definition of "personal information" found in other jurisdictions' public disclosure statutes. *See, e.g.,* Alaska Stat. 40.25.350(2) (2006) ("information that can be used to identify a person and from which judgments can be made about a person's character, habits, avocations, finances, occupation, general reputation, credit, health, or other personal characteristics"); Cal. Civ. Code 1798.3(a) (West 2005) ("any information that is maintained by an agency that identifies or describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history"); *Jordan v. Motor Vehicle Div.*, 308 Or. 433, 441, 781 P.2d 1203 (1989) ("information specific to one individual").

Because the identities of public school teachers alleged to have committed sexual misconduct is personal information under the PDA, we now turn to whether the teachers have a right to privacy in such personal information. The letters of direction are addressed separately in a subsequent section.

2. Teachers who are the subjects of unsubstantiated allegations of sexual misconduct have a right to privacy in their identities

Personal information is exempt from disclosure only to the extent disclosure violates an employee's right to privacy. Former RCW 42.17.310(1)(b). The PDA sets forth a test for determining when the right to privacy is violated, former RCW 42.17.255 (1987), but does not explicitly identify when the right to privacy in question exists. In enacting former RCW 42.17.255, the legislature stated that the term "privacy" "is intended to have the same meaning as the definition given that word by the Supreme Court in 'Hearst v. Hoppe.'" Laws of 1987, ch. 403, § 1.

In *Hearst*, we defined "right to privacy" in the context of former RCW 42.17.310(1)(c) by looking to the common law tort of invasion of privacy by public disclosure of private facts. 90 Wn.2d at 135. We adopted the definition of "invasion of privacy" as provided in *Restatement (Second) of Torts* § 652D (1977) (§ 652D) which reads, "'[o]ne who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of privacy, if the

matter publicized is of a kind that (a) would be highly offensive to a reasonable person and (b) is not of legitimate concern to the public.'" *Hearst*, 90 Wn.2d. at 135-36 (quoting § 652D).

A person has a right to privacy in "'matter[s] concerning the private life.'" *Id.* at 135 (quoting § 652D). One of the comments to § 652D illustrates the nature of facts that could be considered matters concerning the private life.

> "Every individual has some phases of his life and his activities and some facts about himself that he does not expose to the public eye, but keeps entirely to himself or at most reveals only to his family or to close personal friends. Sexual relations, for example, are normally entirely private matters, as are family quarrels, many unpleasant or disgraceful or humiliating illnesses, most intimate personal letters, most details of a man's life in his home, and some of his past history that he would rather forget. When these intimate details of his life are spread before the public gaze in a manner highly offensive to the ordinary reasonable man, there is an actionable invasion of his privacy, unless the matter is one of legitimate public interest."

Id. at 136 (quoting § 652D cmt. b).[13]

[13]The Times asserts that "the conduct of public employees on the job is not a private matter under any formulation of privacy" because it does not "relate[] to 'the intimate details of one's personal and private life.'" Suppl. Br. of Resp't Times at 2-3 (quoting *Spokane Police Guild v. Liquor Control Bd.*, 112 Wn.2d 30, 38, 769 P.2d 283 (1989)). Former RCW 42.17.255 does not state or imply that the right to privacy is limited to the intimate details of one's personal and private life. Our case law is divided as to whether the privacy provision of the PDA pertains only to intimate details of one's personal and private life. *Compare Koenig*, 158 Wn.2d at 185, *and Brouillet v. Cowles Publ'g Co.*, 114 Wn.2d 788, 797-98, 791 P.2d 526 (1990), *and Brown v. Seattle Pub. Schs.*, 71 Wn. App. 613, 860 P.2d 1059 (1993), *with Dawson*, 120 Wn.2d at 797, *and Spokane Police Guild*, 112 Wn.2d at 39, *and Cowles Publ'g Co. v. State Patrol*, 109 Wn.2d 712, 748 P.2d 597 (1988) (plurality opinion).

A public employee has a right to privacy in some information within a personnel file, but the scope of this right is unclear. In *Cowles Publishing Co. v. State Patrol*, 109 Wn.2d 712, 727, 748 P.2d 597 (1988) (plurality opinion), we held a police officer's right to privacy is not violated when a complaint about a specific instance of misconduct, substantiated after an internal investigation, is disclosed. We stated, "[i]nstances of misconduct of a police officer while on the job are not private, intimate, personal details of the officer's life" because the misconduct "occurred in the course of public service."[14] *Id.* at 726. Yet, we also noted, "complaints which were later dismissed[] would constitute a more intrusive invasion of privacy." *Id.* at 725.

In *Brouillet v. Cowles Publishing Co.*, 114 Wn.2d 788, 797-98, 791 P.2d 526 (1990), we held records specifying the reasons for revoking a teacher's certification must be disclosed, but we did not indicate whether such records were protected by

[14]In *Columbian Publishing Co. v. City of Vancouver,* 36 Wn. App. 25, 27, 671 P.2d 280 (1983), an association of police officers voted no confidence in their police chief and then issued a press release noting their general concerns. The officers then provided specific complaints to the city. *Id.* The Court of Appeals determined the complaints dealt with the police chief's performance of his public duties and, hence, the chief did not have a right to privacy in such statements. *Id.* at 30. The complaining officers were deemed to have waived any right to privacy in their complaints by making the initial press release. *Id.*

the right to privacy. Instead, we cited the two-prong test of former RCW 42.17.255 as the definition of privacy. *Id.* We then concluded the records were of legitimate public interest because they contained "information about the extent of *known* sexual misconduct in the schools." *Id.* at 798 (emphasis added). We did not address whether teachers have a right to privacy in unsubstantiated allegations of sexual misconduct.

In *Dawson*, we held disclosure of a deputy prosecutor's performance evaluation violated the prosecutor's right to privacy.[15] 120 Wn.2d at 800. We noted, "[s]peaking generally about the right of privacy, we have stated that the right of privacy applies 'only to the intimate details of one's personal and private life.'" *Id.* at 796. We then determined an employee evaluation contains personal information and applied the test of former RCW 42.17.255 without making the threshold determination of whether the prosecutor had a right to privacy in the evaluation. *Id.* at 797-98. We concluded disclosure of a performance evaluation would violate the prosecutor's right to privacy because it would be highly offensive

[15]Prior to *Dawson*, the Court of Appeals held school district employees' performance evaluations and work records could be disclosed as long as the employees' names were redacted. *Ollie v. Highland Sch. Dist. No. 203*, 50 Wn. App. 639, 645, 749 P.2d 757 (1988). After *Dawson*, the Court of Appeals held the disclosure of documents relating to performance evaluations and documents containing general concerns about a principal's performance violated the principal's right to privacy. *Brown*, 71 Wn. App. at 619.

and the public does not have a legitimate concern in such information.[16] *Id.* at 796-98.

In short, we previously determined that when a complaint regarding misconduct during the course of public employment is substantiated or results in some sort of discipline, an employee does not have a right to privacy in the complaint. We have also held performance evaluations are protected by the right of privacy. The remaining issue is whether a person has a right to privacy in false or unsubstantiated allegations of misconduct.

An unsubstantiated or false accusation of sexual misconduct is not an action taken by an employee in the course of performing public duties and, thus, the accusation does not fall within the same category as *Cowles*. Nor have these accusations resulted in any form of discipline, such as the revocation of a teaching

[16]In determining whether disclosure of a performance evaluation would be highly offensive, we looked to other jurisdictions. *Dawson*, 120 Wn.2d at 796-97. Contrary to the dissent's assertion, dissent at 7 n.3, we did not identify which items within a personnel file would be protected by the right of privacy. We noted that an employment record would contain "'references to family problems, health problems, past and present employers' criticism and observations, military records, scores from IQ [intelligence quotient] tests and performance tests . . . and other matters, many of which most individuals would not willingly disclose publicly.'" *Dawson*, 120 Wn.2d at 797 (second alteration in original) (internal quotation marks omitted) (quoting *Missoulian v. Bd. of Regents*, 207 Mont. 513, 524, 675 P.2d 962 (1984)). Thus, contrary to the dissent's characterizations, *Dawson* did not limit its reasoning to "information obtained during employee evaluations," dissent at 9. 120 Wn.2d at 797. Information found within an employment record may be protected by the right of privacy regardless of whether it is obtained during or used for an employee evaluation.

certificate in *Brouillet*. The fact of the allegation, not the underlying conduct, does not bear on the teacher's performance or activities as a public servant.[17] The mere fact of the allegation of sexual misconduct toward a minor may hold the teacher up to hatred and ridicule in the community, without any evidence that such misconduct ever occurred. The fact that a teacher is accused of sexual misconduct is a "matter concerning the private life" within the *Hearst* definition of the scope of the right to privacy. *Hearst*, 90 Wn.2d at 135. Thus, we hold the teachers have a right to privacy in their identities because the unsubstantiated or false allegations are matters concerning the teachers' private lives and are not specific incidents of misconduct during the course of employment.

3. Disclosure of unsubstantiated allegations of sexual misconduct violates a teacher's right to privacy under former RCW 42.17.310(1)(b)

"A person's 'right to privacy'" is "violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public." Former RCW 42.17.255.

a. Disclosure of the identities of teachers who are the subjects of

[17]Contrary to the dissent's reasoning, dissent at 10, *Cowles* does not control our analysis of whether an unsubstantiated allegation bears on a teacher's performance. *Cowles* dealt solely with complaints against law enforcement officers sustained "after internal investigations conducted by their respective law enforcement agencies." 109 Wn. App. at 713. The complaints in *Cowles* were substantiated and, thus, represented actions taken by employees in the course of performing their public duties.

unsubstantiated allegations of sexual misconduct is highly offensive

It is undisputed that disclosure of the identity of a teacher accused of sexual misconduct is highly offensive to a reasonable person.[18] *See Dawson*, 120 Wn.2d at 796 (holding disclosure of performance evaluations that do not discuss specific instances of misconduct are presumed to be highly offensive); *City of Tacoma v. Tacoma News, Inc.*, 65 Wn. App. 140, 145, 827 P.2d 1094 (1992) (noting that it is undisputed that disclosure of unsubstantiated allegations of child abuse is highly offensive to a reasonable person). Having concluded that disclosure of the identities of teachers accused of sexual misconduct is highly offensive to a reasonable person, our next step is to determine whether the identities are of legitimate public concern.

b. The public does not have a legitimate concern in the identities of teachers who are the subjects of unsubstantiated allegations of sexual misconduct

The second question is whether the identities of teachers who are the subjects of unsubstantiated allegations of sexual misconduct are a matter of legitimate public concern. "'[L]egitimate'" means "'reasonable.'" *Dawson*, 120 Wn.2d at 798. "[O]ne factor bearing on whether information is of legitimate concern to the public

[18]Contrary to the trial court's reasoning, the offensive nature of disclosure does not vary depending on whether the allegation is substantiated or unsubstantiated. The offensiveness of disclosure is implicit in the nature of an allegation of sexual misconduct.

is whether the information is true or false." *Tacoma News*, 65 Wn. App. at 148. Generally, "the public as a rule has no legitimate interest in finding out the names of people who have been falsely accused." *Bellevue John Does*, 129 Wn. App. at 853; *Tacoma News*, 65 Wn. App. at 148.

The trial court looked at whether the allegations were substantiated to determine whether there was a legitimate public interest in the records, believing the public lacks a legitimate concern in unsubstantiated allegations.[19] The Court of Appeals disagreed with the trial court's analysis, concluding the public has a legitimate concern in knowing the names of teachers who are the subjects of unsubstantiated allegations, but not patently false claims. *Bellevue John Does*, 129 Wn. App. at 855-57. The Court of Appeals reasoned the public has a legitimate concern in the identities of teachers who are the subjects of unsubstantiated allegations because

> "unsubstantiated" often means only that an investigator, faced with conflicting accounts, is unable to reach a firm conclusion about what really happened and who is telling the truth. Especially when the conduct reported is a fleeting touch, a comment seemingly off-color or

[19]As will subsequently be discussed, when allegations of sexual misconduct are unsubstantiated, the public may have a legitimate concern in the nature of the allegation and the response of the school system to the allegation. In this case, the school districts provided the Times with "numerous records documenting the nature of the allegation in each case, the grade level, the type of investigation conducted, and any disciplinary action taken. But the names of the teachers were changed to 'John Doe' pseudonyms, and other identifying information was redacted." *Bellevue John Does*, 129 Wn. App. at 841. Because these portions of the records are not at issue, we do not address whether there is a legitimate public concern in such records.

> directed at a student's physical appearance, or a habit of writing personal notes, it is possible that the accuser misunderstood the words, misinterpreted the intent, or even fabricated the entire event. But it is also possible that the accuser was accurately reporting inappropriate conduct. Where that possibility exists, the public has a legitimate interest in knowing the name of the accused teacher.

Id. at 856.

As a preliminary matter, we choose to address whether the public has a legitimate concern in the identities of teachers who are the subjects of unsubstantiated claims of sexual misconduct rather than patently false claims. Making a distinction between "unsubstantiated" and "patently false" is vague and impractical. Placing the burden on agencies and courts to determine whether allegations are patently false rather than simply unsubstantiated is unworkable, time consuming, and, absent specific rules and guidelines, likely to lead to radically different methods and conclusions. For example, in this case the Court of Appeals gave little guidance to agencies and courts as to when an allegation should be deemed "false" as opposed to "unsubstantiated"; instead, the court embarked on its own fact-finding inquiry and made these determinations itself, ultimately concluding the allegations against Federal Way John Doe 1, Seattle John Doe 1, and Seattle John Doe 7 were "patently false," and, therefore, the identities of those teachers were exempt from disclosure. *Id.* at 857.

The trial court's rule that the identities of teachers who are subjects of unsubstantiated allegations (which would, of course, include patently false allegations) should remain undisclosed is a clearer, more feasible solution. Moreover, the legislature already distinguishes between substantiated and unsubstantiated allegations of sexual misconduct in schools. When a current or former school employee applies for a job in a new school district, the former school district employer must provide the new school district with all of the information related to sexual misconduct in the applicant's personnel record. RCW 28A.400.301(4). Sexual misconduct is defined for purposes of RCW 28A.400.301 to only include instances where "the school district has made a determination that there is sufficient information to conclude that the abuse or misconduct occurred and that the abuse or misconduct resulted in the employee's leaving his or her position at the school district." RCW 28A.400.301(11); WAC 181-88-060 ("For purposes of this section, sexual misconduct occurs only when a school district determines it has sufficient information to conclude that an employee engaged in the sexual misconduct."). If the legislature did not require release of unsubstantiated claims between school districts, it is difficult to imagine that the legislature intended public disclosure of the same.

We now turn to whether the public has a legitimate concern in the identities of teachers who are the subjects of unsubstantiated allegations of sexual misconduct. The Times argues that regardless of the outcome of an investigation, the names of teachers who are alleged to have committed sexual misconduct are of legitimate public concern under our decision in *Brouillet*, 114 Wn.2d 788. *See* Suppl. Br. of Resp't Times at 13. In *Brouillet*, we held records specifying the reasons for the revocation of teacher certificates should be disclosed pursuant to a proper PDA request. 114 Wn.2d at 790. We opined,

> [s]exual abuse of students is a proper matter of public concern because the public must decide what can be done about it. The public requires information about the extent of *known sexual misconduct* in the schools, its nature, and the way the school system responds in order to address the problem.

Id. at 798 (emphasis added).[20] However, *Brouillet* did not address whether unsubstantiated allegations, rather than known sexual misconduct, were a matter of legitimate public concern and it is not dispositive of the issue in this case.

Next, we turn to the Times' argument that the public has a legitimate concern in monitoring the school districts' investigations of allegations of sexual misconduct and the identity of the accused is imperative to the effectiveness of such monitoring.

[20]In *Brouillet*, there was no dispute between the parties as to whether the public had a legitimate concern in the reasons for revoking a teacher's certificate. 114 Wn.2d at 798.

The trial court determined that while the public has a legitimate concern in school district investigations of allegations of sexual misconduct, the public does not have a legitimate concern in the identities of teachers who are the subjects of unsubstantiated allegations because their identities do not aid the public in overseeing the government's response to the allegations. In contrast, the Court of Appeals determined that the public has a legitimate concern in the identities of teachers whose allegations are deemed unsubstantiated because a pattern of unsubstantiated complaints against a single teacher is indicative of the truthfulness of such allegations.[21]

Precluding disclosure of the identities of teachers who are subjects of unsubstantiated allegations will not impede the public's ability to oversee school districts' investigations of alleged teacher misconduct. As noted by amicus American Civil Liberties Union of Washington (ACLU-WA), "[t]he identity of the

[21]The Times and the Court of Appeals contend that a teacher's identity must be disclosed even if the allegations are unsubstantiated because if a teacher's record includes several unsubstantiated complaints, "the pattern is more troubling than each individual complaint." *Bellevue John Does*, 129 Wn. App. at 856. However, if teachers' identities are replaced with pseudonyms, members of the public will still be able to track and determine whether a certain teacher is the subject of numerous unsubstantiated allegations. Amicus Washington Education Association (WEA) suggests, "[a]t the time of an *in camera* review, a trial court could fashion a remedy for this potential problem by requiring the use of the same numerical identifier for a John Doe who may be accused of multiple unsubstantiated allegations." Suppl. Br. of Amicus WEA at 7 n.2. The legislature could fashion such a tracking system to allow for public oversight while protecting individual teachers' privacy rights.

accused . . . is unnecessary, and plays little role in the public's oversight of the *investigation.* The name is most relevant to public oversight *if* the misconduct occurred—if the misconduct didn't occur, the only actual governmental action is the investigation." Amicus Curiae Br. of ACLU-WA at 6 (Br. of ACLU-WA). Amicus Washington Education Association (WEA) agrees, adding, "there simply is no legitimate public concern in the name of the accused unless there is a finding of wrongdoing. The alternative is too damaging to a person's career . . . without a corresponding public benefit." Suppl. Br. of Amicus Curiae WEA in Supp. of Pet'rs at 4 (Br. of WEA).

When an allegation is unsubstantiated, the teacher's identity is not a matter of legitimate public concern. In essence, disclosure of the identities of teachers who are the subject of unsubstantiated allegations "serve[s] no interest other than gossip and sensation." *Bellevue John Does*, 129 Wn. App. at 854. The public can continue to access documents concerning the nature of the allegations and reports related to the investigation and its outcome, all of which will allow concerned citizens to oversee the effectiveness of the school districts' responses. The identities of the accused teachers will simply be redacted to protect their privacy interests. *See* former RCW 42.17.260(1) (providing that agencies may delete names

and other identifying information from records if such deletions are "required to prevent an unreasonable invasion of personal privacy").

Finally, we consider whether the quality of a school district's investigation should determine whether an individual's right to privacy is violated. The trial court determined that if an investigation is inadequate, the identity of the accused teacher is a matter of legitimate public concern. This rule fails to adequately protect teachers' privacy rights and incorrectly presumes that the presence of an allegation is indicative of increased likelihood of misconduct.[22] "[W]hether or not there was an adequate investigation should not, as a policy matter, determine the accused's right to privacy because the accused has no control over the adequacy of the investigation." Br. of WEA at 13-14. Furthermore, the trial court's rule is inconsistent with the intent of the PDA and our determination that the identities of teachers accused of sexual misconduct should be released *only* if a school district has found the allegations to be substantiated. Finally, a rule that necessarily involves a court's examination of the quality of a school district's investigation is neither clear nor easily applied.[23]

---

[22]Importantly, teacher petitioners remind us that "[a]n allegation is not a fact, and no matter how many false or unsubstantiated allegations might be coupled together, they are nonetheless just allegations." Suppl. Br. of Bellevue John Does at 16.

[23]Respondent Federal Way School District (FWSD) aptly observes,

> the approach that [the trial judge] . . . eventually adopted—which is in many cases

The Times worries that withholding the identities of teachers who are the subjects of inadequate investigations may allow school districts to get away with less than acceptable investigations and permit teachers (whose reputations have not been cleared by thorough investigations) to avoid public scrutiny of their alleged misconduct.[24] But the problem of inadequate investigations and the desired standards for such investigations are entirely separate issues. Under our holding, the public can access documents related to the allegations and investigations (subject to redactions), thus maintaining the citizens' ability to inform themselves about school district operations.

Furthermore, other provisions of the PDA make it unlikely that an agency will routinely make self-serving determinations of whether a public record must be disclosed. A requester may challenge the agency's decision, which is reviewed de

---

> dependent upon a determination of the adequacy of each investigation of misconduct—would not produce the kind of clear rule that public entities would be able to apply with confidence in future cases. To the extent such unpredictable—if not entirely subjective—rules can be avoided, FWSD urges the Court to do so.

Br. of Resp't FWSD at 5 (citation omitted).

[24]The dissent argues school districts are unlikely to conduct adequate investigations of allegations of sexual misconduct because of the threat of potential lawsuits. Dissent at 11-12. The dissent fails to recognize that a school district may be held liable for failing to adequately investigate such a complaint and continuing to employ a teacher. *Peck v. Sian*, 65 Wn. App. 285, 288-92, 827 P.2d 1108 (1992) (discussing grounds for negligent retention of a teacher); *see Christensen v. Royal Sch. Dist. No. 160*, 156 Wn.2d 62, 76, 124 P.3d 283 (2005) (Madsen, J., concurring in part, dissenting in part) (a district has a duty to investigate allegations of sexual abuse as part of its supervisory duty).

novo, and significant penalties and attorney fees may be imposed if the agency fails to comply with the PDA. For the reasons stated above, the identities of teachers who are subjects of unsubstantiated complaints should not be disclosed, regardless of the quality of the investigation.

Thus, we hold that the public lacks a legitimate interest in the identities of teachers who are the subjects of unsubstantiated allegations of sexual misconduct because the teachers' identities do not aid in effective government oversight by the public and the teachers' right to privacy does not depend on the quality of the school districts' investigations.

D. A letter of direction is not exempt from disclosure under the PDA, but where a letter does not identify substantiated misconduct and the teacher is not subject to any form of discipline or restriction, the teacher's name and other identifying information must be redacted

Having already established that a letter of direction is personal information, we now turn to whether a teacher has a right to privacy in a letter of direction. In *Dawson*, we assumed a prosecutor had a right to privacy in his or her performance evaluations. *See* 120 Wn.2d at 796-99. We see no reason to depart from this precedent. Teachers have a right to privacy in the letters of direction in their personnel files. Thus, we turn to whether disclosure of the letters of direction violates the teachers' right to privacy.

1. Disclosure of an unredacted letter of direction is highly offensive if the letter does not identify substantiated misconduct and the teacher is not subject to any form of discipline or restriction

In *Dawson*, we held "that disclosure of performance evaluations, which do not discuss specific instances of misconduct, is presumed to be highly offensive." *Id.* at 797. We went on to note that such disclosure may not be highly offensive if information that would identify a specific employee was redacted. *Id.* In *Cowles*, we noted that disclosure of complaints against law enforcement officers that were later dismissed was more offensive than complaints that resulted in some discipline. 109 Wn.2d at 725.

In this case, the letters of direction discuss specific alleged misconduct but do not mention any substantiated misconduct by the teachers. Following our analysis above regarding disclosure of the actual allegations, disclosure of a teacher's identity would be highly offensive if the letter of direction does not identify substantiated misconduct and the teacher is not disciplined or subjected to any restriction.

If a teacher's identity is redacted, disclosure of the redacted letter of direction is not highly offensive. Teacher petitioners urge us to treat letters of direction as routine employment evaluations exempt from disclosure under *Dawson*, 120 Wn.2d

at 798. However, teacher petitioners fail to establish how disclosure of a letter of direction is highly offensive if all identifying information is redacted. If disclosure is not highly offensive under former RCW 42.17.255, we need not determine whether there is a legitimate public concern in redacted letters of direction. Thus, we turn to whether there is a legitimate public concern in the identities of teachers who are the subjects of letters of direction that do not identify any substantiated allegations or impose any discipline.

2. The public does not have a legitimate concern in the identities of teachers who are the subjects of letters of direction when such letters do not identify any substantiated misconduct or impose any discipline

The public does not have a legitimate concern in unredacted letters of direction when such letters do not identify any substantiated allegations or impose any discipline. While our inquiry into the legitimacy of the public's concern cannot take into account the identity of the requesting party or the purpose of the request, former RCW 42.17.270 (1987), *amended and recodified as* RCW 42.56.080 (Laws of 2005, ch. 483, § 1, ch. 274, § 285), the legitimacy of the public's concern should be viewed in the context of the PDA. *Dawson*, 120 Wn.2d at 797-798.

The PDA seeks to provide people with full access to public records while remaining "mindful of the right of individuals to privacy and of the desirability of

the efficient administration of government." RCW 42.17.010(11). "Requiring disclosure where the public interest in efficient government could be harmed significantly more than the public would be served by disclosure is not reasonable." *Dawson*, 120 Wn.2d at 798. In *Dawson*, we determined that while "the public has some degree of interest in . . . the evaluations of prosecutors," legitimate public concern is lacking in light of the potential harm caused by disclosure. *Id.* at 799. We cited the erosion of employee morale as a possible harm resulting from the disclosure of employee evaluations, along with the "'chill[ing] [of] candor in the evaluation process.'" *Id.* at 799 (quoting *Ripskis v. Dep't of Hous. & Urban Dev.*, 241 U.S. App. D.C. 8, 746 F.2d 1, 3 (1984)).

Here, we are urged to prevent disclosure of the teachers' identities because of potential harm to the school districts and an invasion of the teachers' privacy. Teacher petitioners point out numerous harmful effects resulting from disclosure of letters of direction, including a decline in the reporting of allegations, unwillingness by supervisors to memorialize any communications regarding alleged misconduct, and the loss of institutional knowledge when a supervisor leaves a school district because previous communications with employees were not in writing. *See* Pet. for Review at 16. Respondent Federal Way School District (FWSD) observes that if

letters of direction are released to the public, "[d]espite the letter of direction serving merely as an evaluative, supervisory tool, employees will view the potential public disclosure of such letters as threatening their professional reputations, and therefore worthy of vigorous challenge." Br. of Resp't FWSD at 7.

Amicus ACLU-WA echoes these concerns, asserting that disclosure of teacher identities and letters of direction may result in qualified teachers avoiding the profession, a reluctance to work with "difficult" or challenging students, and the avoidance or hesitation on the part of administrators to issue letters of direction out of fear that teachers will file costly grievance procedures. Br. of ACLU-WA at 9-10. Most importantly, notes amicus ACLU-WA, if letters of direction are disclosed to the public, schools will lose the valuable opportunity to address and correct minor professional conduct issues.

> Investigations into alleged misconduct often reveal behaviors that cannot fairly be described as "misconduct," but nonetheless fail to meet desired professional standards. There is value in allowing a supervisor or investigator to suggest changes in behavior, or remind employees of desired standards. But if these suggestions are opened to public view, it is likely that many supervisors will instead choose to remain silent, or at least not use written direction, so as not to tarnish a generally good employee's reputation.

Id. at 11.

The trial court determined that disclosure of unredacted letters of direction

would "substantially and irreparably damage vital government functions because it would chill employer-employee communications by making all written communications between employer and employee subject to disclosure." CP at 100, ¶ 10. The Court of Appeals was not persuaded that the negative impact of disclosing letters of direction outweighed the public interest articulated in *Brouillet* and ordered that the unredacted letters of direction be disclosed.[25] *Bellevue John Does*, 129 Wn. App. at 848-49.

We find that there is no legitimate public concern in information identifying the teachers within the letters of direction but that disclosure of redacted letters of direction does not violate the teachers' right to privacy because it is not highly offensive. Thus, we hold that the PDA mandates disclosure of letters of direction; however, where a letter simply seeks to guide future conduct, does not mention substantiated misconduct, and a teacher is not disciplined or subject to any restriction, the name and identifying information of the teacher should be redacted. This result protects both the public interest in overseeing school districts' responses to allegations (letters of direction give citizens a complete picture of a school district's investigations and accompanying procedures) and the teacher's individual

[25]As mentioned earlier, *Brouillet* stands only for the proposition that *known* sexual misconduct on behalf of teachers is of legitimate public concern, and the Court of Appeals' reliance on *Brouillet* is misplaced.

privacy rights.

IV. CONCLUSION

We reverse the Court of Appeals in part. We hold a teacher's identity should be released under the PDA only when alleged sexual misconduct has been substantiated or when that teacher's conduct results in some form of discipline, even if only a reprimand. Letters of direction and related documents must be disclosed under the PDA, but where a letter simply seeks to guide future conduct, does not identify an incident of substantiated misconduct, and does not subject the teacher to any form of restriction or discipline, a teacher's name and other identifying information must be redacted.

The case is remanded for further proceedings consistent with this opinion.

AUTHOR:
Justice Mary E. Fairhurst

WE CONCUR:
Chief Justice Gerry L. Alexander
Justice Susan Owens
Justice James M. Johnson
Bobbe J. Bridge, Justice Pro Tem.

Justice Tom Chambers, result only